

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

Case No. 1:16-cr-00776 (VEC)

JOSEPH PERCOCO,
a/k/a "Herb,"
ALAIN KALOYEROS,
a/k/a "Dr. K,"
PETER GALBRAITH KELLY, JR.,
a/k/a "Braith,"
STEVEN AIELLO,
JOSEPH GERARDI,
LOUIS CIMINELLI,
MICHAEL LAIPPLE, and
KEVIN SCHULER,

Defendants.

**DECLARATION OF JESSICA A. MASELLA IN SUPPORT OF THE BUFFALO
DEFENDANTS' JOINT MOTIONS TO DISMISS, FOR SEVERANCE, AND FOR AN
ORDER COMPELLING DISCLOSURE OF THE GRAND JURY TRANSCRIPTS, AND
IN SUPPORT OF DEFENDANT LOUIS CIMINELLI'S MOTION TO SUPPRESS**

JESSICA A. MASELLA, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury that the following is true and correct:

1. I am a partner with the law firm DLA Piper LLP (US), counsel of record for Defendant Louis P. Ciminelli, and I represent Mr. Ciminelli in this case.
2. This declaration is made upon my personal knowledge and upon information I learned during my investigation of the charges set forth in the Indictment.¹

¹ The original indictment was returned on November 22, 2016. On May 11, 2017, the grand jury returned superseding indictment S1 16 Cr. 776 (the "Indictment").

3. My declaration is offered in support of:
 - a. the joint motion of Defendants Louis Ciminelli, Michael Laipple, and Kevin Schuler (the “Buffalo Defendants”) for an order dismissing the Indictment against them pursuant to Federal Rule of Criminal Procedure 12;
 - b. the Buffalo Defendants’ joint motion for severance pursuant to Federal Rules of Criminal Procedure 8(b) and 14;
 - c. the Buffalo Defendants’ joint motion for an order compelling disclosure of the Grand Jury transcripts pursuant to Federal Rule of Criminal Procedure 6; and
 - d. Defendant Louis Ciminelli’s motion to suppress the email search pursuant to Federal Rule of Criminal Procedure 12.

4. Attached as Exhibit A is a true and correct copy of the Buffalo Request for Proposal, *Request For Proposal: For A Strategic Research, Technology Outreach, Business Development, Manufacturing, And Education And Training Partnership With A Qualified Local Developer In The Greater Buffalo Area*, FORT SCHUYLER MANAGEMENT CORPORATION, Oct. 15, 2013 (the “Buffalo RFP”).

5. Attached as Exhibit B is a true and correct copy of the response to the Buffalo RFP submitted by LPCiminelli, Inc. (the “Buffalo Developer”) dated December 10, 2013 (the “Buffalo Developer Proposal”).

6. Attached as Exhibit C is a true and correct copy of the Syracuse Request for Proposal, *Request For Proposal: For A Strategic Research, Technology Outreach, Business Development, Manufacturing, And Education And Training Partnership With A Qualified Local Developer In The Greater Syracuse Area*, FORT SCHUYLER MANAGEMENT CORPORATION, Oct. 1, 2013 (the “Syracuse RFP”).

7. Attached as Exhibit D is a true and correct copy of the response to the Syracuse RFP submitted by COR Development Company, LLC (the “Syracuse Developer”) dated November 7, 2013 (the “Syracuse Developer Proposal”).

8. Attached as Exhibit E is a true and correct copy of a request for proposal issued by the Fuller Road Management Corporation seeking a qualified local developer in the Capital Region, *Request For Proposal: For A Strategic Research, Technology Outreach, Business Development, Manufacturing, And Education And Training Partnership With A Qualified Local Developer In The Capital Region*, FULLER ROAD MANAGEMENT CORPORATION, May 1, 2014 (the “Capital Region RFP”).

9. Attached as Exhibit F is a true and correct copy of a request for proposal issued by the Fort Schuyler Management Corporation seeking a qualified local developer in the Rochester area, *Request For Proposal: For A Strategic Research, Technology Outreach, Business Development, Manufacturing, And Education And Training Partnership With A Qualified Local Developer In The Greater Rochester Area*, FORT SCHUYLER MANAGEMENT CORPORATION, Mar. 25, 2014 (the “Rochester RFP”).

10. Attached as Exhibit G is a true and correct copy of a redline mark-up showing the comparison of the Buffalo RFP to the Syracuse RFP.

11. Attached as Exhibit H is a true and correct copy of a redline mark-up showing the comparison of the Syracuse RFP to the Capital Region RFP.

12. Attached as Exhibit I is a true and correct copy of a redline mark-up showing the comparison of Syracuse RFP to the Rochester RFP.

13. Attached as Exhibit J are true and correct copies of the retainer agreements executed by the Buffalo Developer with the law firm of Whiteman Osterman & Hanna LLP

(“WOH”) (the “Retainer Agreements”). The Retainer Agreements for each of the relevant years (2013, 2014, and 2015) provide that the “the scope of [WOH’s] representation will be limited to strategic advice and counsel regarding business generation initiatives across New York State” and the “scope of our representation will not include New York State or Federal lobbying.”

14. Attached as Exhibit K is a true and correct copy of the January 28, 2014 Board Resolution of the Fort Schuyler Management Corporation, which selected local developers as a result of the Buffalo RFP (the “Fort Schuyler Board Resolution”).

15. Attached as Exhibit L is a true and correct copy of the response to the Buffalo RFP submitted by McGuire Development Company, dated December 9, 2013 (the “McGuire Proposal”). The McGuire Proposal does not contain the Disclosure of Lobbying Activity form, Attachment E.

16. Attached as Exhibit M is a true and correct copy of the two demonstrative exhibits used by the United States Attorney’s Office during the September 22, 2016 press conference announcing the charges in this case.

17. On November 21, 2016, the Government issued a Grand Jury Subpoena to the Buffalo Developer (the “November Subpoena”), which requested the Buffalo Developer provide “any and all documents sufficient to show the source of funds, or billing codes applied to, any fees, payments or bonuses paid to Todd Howe between 2010 and the present, including but not limited to records indicating that any public funds were used or allocated to pay Todd Howe.” Attached as Exhibit N is a true and correct copy of the November Subpoena.

18. By letter correspondence dated December 5, 2016, the Buffalo Developer, by and through its counsel, responded to the November Subpoena, stating that it “has no documents responsive to this subpoena” (the “Buffalo Developer’s Response to the November Subpoena”).

Attached as Exhibit O is a true and correct copy of the Buffalo Developer's Response to the November Subpoena.

19. By email correspondence dated April 9, 2017, the Government contacted the Buffalo Developer's counsel to discuss the Buffalo Developer's Response to the November Subpoena (the "Government Inquiry"). The Government wrote: "Is it your position that [the Buffalo Developer] has no documents that show the source of funds, fees, payments or bonuses paid to Todd Howe (or any related billing codes), as requested in the subpoena, or that those records have already been produced. If the latter, can you please identify anything in your prior productions responsive to our request?" Attached as Exhibit P is a true and correct copy of the Government Inquiry.

20. By letter correspondence and by email dated April 12, 2017, the Buffalo Developer, by and through its counsel, responded to the Government Inquiry (the "Response to the Government Inquiry"). The Buffalo Developer provided: "Our response remains the same. There are no responsive documents." The Buffalo Developer further clarified: "It appears the Government has the mistaken impression that [the Buffalo Developer] paid Todd Howe. It did not. Nor did the Buffalo [D]efendants." Attached as Exhibit Q is a true and correct copy of the Response to the Government Inquiry.

21. Attached as Exhibit R is a true and correct copy of an email search warrant and non-disclosure order issued on December 8, 2015, in the United States District Court for the Southern District of New York with docket number 15 Mag. 4389.

22. Attached as Exhibit S is a true and correct copy of an application submitted and order issued on October 16, 2015, in the United States District Court for the Southern District of New York with docket number 15 Mag. 3736.

23. Attached as Exhibit T is a true and correct copy of the “Discovery Index for All Defendants” provided by the Government on April 5, 2017.

24. By letter transmitted on May 17, 2017, counsel for the Buffalo Defendants requested that the Government provide a bill of particulars pursuant to Federal Rule of Criminal Procedure 7(f).

25. On May 19, 2017, pursuant to Local Criminal Rule 16.1, various counsel for the Buffalo Defendants, including me, met and conferred via telephone with counsel for the Government regarding the Buffalo Defendants’ request for a bill of particulars. Counsel for the Government indicated that it would review and respond to the Buffalo Defendants’ request for a bill of particulars. Counsel for the Government indicated that it would likely respond to that request, in writing, before the deadline for the Government’s response to the Defendants’ pretrial motions is due in this case. Accordingly, at the present time, the request for a bill of particulars is outstanding and necessitates the filing of a motion. However, if the Government’s response satisfies the Buffalo Defendants’ request, then the Buffalo Defendants will withdraw it before the motions in this case are fully briefed.

Dated: New York, New York
May 19, 2017

Respectfully submitted,

DLA PIPER LLP (US)
Attorneys for Defendant Louis Ciminelli

By: /s/Jessica A. Masella
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